



Leaders in Asset Management

San Fernando Valley Chapter
September 15 Meeting at JPL

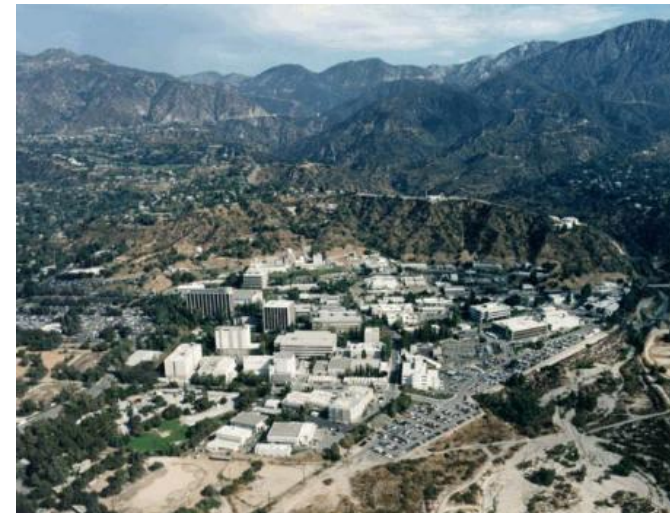


CALL MEETING
TO ORDER

WELCOME TO JPL

JOURNEY TO THE PLANETS
AND BEYOND

- Call meeting to order – Alex Chang, President NPMA SFV Chapter
- Welcome to JPL - Mr. Willis Chapman, Division Manager 2700 – Logistics and Technical Information Division
- DVD - Journey to the Planets and Beyond (Length 23:47 min/sec – Narrated by Harrison Ford / Begins with a welcome by the JPL Director, Dr. Charles Elachi)
- Intermission to change rooms – Multipurpose room (B20) in the basement
- Introduction of main presentation speakers





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Presentation: Management of Subcontract Property from a Acquisition Manager's Point of View

Speakers:



Michael P. Kleine
JPL Principal Acquisition Advisor



Co-Speaker

Kent Johnson
JPL Section Manager
Acquisition Planning and Compliance

Presentation Closing Remarks: Mr. Karl Bird, Division Manager 2600-Acquisition

Thank You Gifts / Meeting Close - Alex Chang, President NPMA San Fernando Valley



Government Property Overview

- Policy—Federal Acquisition Regulation (FAR Part 45)
- Solicitation and Choice of Clause requirements
- Contracting Officer/ACO/PA Responsibilities
 - Pre-Award
 - Post-Award
- Issues and concerns-Examples
- Strategies for handling-Do's and Don'ts

FAR Part 45

- Policy/Procedures governing Government Property (GP)
 - Definitions– 45.101
 - Policy– 45.102
 - General– 45.103
 - Responsibility and Liability for GP– 45.104
 - Property Management System Compliance– 45.105
 - Transferring Accountability– 45.106

FAR Part 45

- Policy/Procedures governing Government Property (GP) (cont.)
 - Contract Clauses– 45.107
 - Solicitation and Evaluation Procedures– 45.2
 - Authorizing Use and Rental of GP– 45.3
 - Title to GP-45.4
 - Support GP Administration-45.5
 - Reporting, Reutilization and Disposal-45.6

Selected Definitions-The Basics

- *Government Property*
 - All property owned or leased by the Government
 - Includes both govt. furnished (GFP) and contractor-acquired (CAP)
 - Includes material, equipment, special tooling, special test equipment and real property
 - Does *not* include Intellectual property and software
- *Contractor-acquired property (CAP)*
 - Property acquired, fabricated, or otherwise provided by the contractor for performing a contract and to which the Government has title
- *Government-furnished property (GFP)*
 - Property in possession of or directly acquired by Govt. and furnished to contractor for performance of contract.

Selected Definitions (cont.)

- *Government-furnished property (GFP)* (cont.)
 - Can include CAP if a deliverable under cost contract when accepted by Govt. for continued use under contract
- *Contractor-furnished property*-is there such a thing?
- *Material*
 - Property consumed, component parts of higher assembly or loses its identity in end-item
 - Does not include Special Tooling, Special Test Equipment or real property
- *Provide*
 - Means furnish (e.g. GFP) or acquire (CAP)
 - Note: CAP subsequently transferred to another contract with same contractor treated differently

Pre-RFP Planning

- Get my property rep. involved
- Will GP be provided or acquired?
- Will GP come from another contract?
- Which Clauses should I use?
- How is GP managed during performance?
- How are equitable adjustments handled?
- Who is liable for loss or damage?
- How do I review a Property Management Plan?
- Title issues
- Disposition

Should Govt. Prop. be provided?

- Standard Policy – FAR 45.102
 - Contractor ordinarily required to furnish *all property* necessary to perform Government contracts
- Provide only when clearly demonstrated
 - In Govt.'s best interest
 - Overall benefit ***significantly*** outweighs increased administrative cost
 - Does not substantially increase Government's risk
 - Can't otherwise be met

Should Govt. Prop. be provided?

- Contractor's inability/unwillingness to supply *not* sufficient reason to furnish GP or allow acquiring GP (FAR 45.102 (c))
- Common excuse: It's easy to do
 - Less expensive to provide (maybe)
- Caveats
 - Consider *all* variables before furnishing GP
 - Goal: Reduce GP to maximum extent practicable

Should Govt. Prop. be provided?

- *Exception to general rule against providing GP*
 - Govt. Property furnished for
 - Repair
 - Maintenance
 - Overhaul
 - Modification

If GP is to be *provided* (Far 45.201)

- Solicitation Requirements
 - List in RFP attachment and include the following
 - The name, part number and description, manufacturer, model number, and National Stock Number (if needed for additional item identification tracking and/or disposition);
 - Quantity/unit of measure;
 - Unit acquisition cost;
 - **Unique-Item Identifier** or equivalent (if available and necessary for individual item tracking); see <http://www.acq.osd.mil/dpap/pdi/uid/index.html> and
 - State whether property furnished “*as-is*” and provide instructions for physical inspection
 - If competitive, make contractor responsible for costs to use GP

If GP is likely to be *requested from Proposer* (Far 45.201(c))

- Describe evaluation procedures if applicable
 - Include rental charges to be evaluated (FAR 52.245-9)
- Request that contractor's proposal provide:
 - List of property to be used on rent-free basis
 - I.D. of accountable contract and authorization for use from cognizant CO
 - Dates property is needed
 - Voluntary consensus standard or industry leading practices to be used to manage GP



Govt. Property Clauses

THE REWRITE OF FAR PART 45

Old Far GP Clause Structure (19 Clauses)

52.245-1 Property Records	52.245-2 Government Property (Fixed-Price) Alternate I and Alternate II	52.245-3 Identification of Government Furnished Property	52.245-4 Government Furnished Property (Short Form)	52.245-5 Government Property (Cost Reimbursement) Alternate I
52.245-6 Liability for Government Property (Demolition Services)	52.245-7/10/11 Government Property (Consolidated Facilities, Facilities Acquisition, and Facilities Use)	52.245-8 Liability for Facilities	52.245-9 Uses and Charges	52.245-12, 13, 14, 15 & 16 Contract Purpose, Accountable FAC, Use of Gov. FAC, Transfer of Title, FAC Equipment Modernization
	52.245-17 Special Tooling	52.245-18 Special Test Equipment	52.245-19 Government Property Furnished "As Is"	

New Far GP Clause Structure (3 Clauses)

52.245-1 Government Property Alternate I Alternate II	52.245-2 Government Property Installation Operation for Services	52.245-9 Uses and Charges
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Govt. Property Clauses

- FAR 52.245-1-Govt. Property applies to:
 - All cost-reimbursable, T&M and L/H contracts involving GP
 - FP contracts (when Govt. property is provided)
 - FAR Part 12 awarded contracts where GP over simplified acquisition threshold is provided
- IF GP applies as above insert both:
 - FAR 52.245-1 Government Property Clause and
 - FAR 52.245-9 Use and Charges Clause

Alternate Clauses used when applicable

- FAR 52.245-1-*ALT 1*- Full Risk of Loss for GP
 - Use in FP competitive contracts when—
 - No Cost or Pricing Data is Required
 - Shifts risk of loss to contractor, except for
 - Reasonable wear and tear
 - Property properly consumed during performance

Alternate Clauses used when applicable

- FAR 52.245-1-ALT II- Cost-reimbursable non-profits
 - Basic or applied research at nonprofit institutions of higher education -or-
 - Non-profit organizations for scientific research
 - Title vests in contractor if <\$5000
 - If \$5000 or more, IAW contract terms
 - Contractor may request keeping GP
 - Must request purchase from CO and report to CO

Alternate Clauses used when applicable

- FAR 52.245-2-Government Property Installation Operation Services
 - GP furnished for initial provisioning only
 - “As is-where is”
 - No warranty of suitability for use
 - Govt. not responsible for repair/replacement
 - Contractor must replace if lost, damaged, etc.
 - Example: Lawnmowers, leaf blowers for facility maintenance effort

Offeror required to submit Property Management Plan-FAR 45.201(c)(4)

- CO required to ask Contractor for ***Property Management Plan (PMP)***
 - Note – No solicitation provision for this in FAR
 - **PMPs** are Executive Level Documents
 - Contractor *briefly* describes its Property Management Plans, Methods, Practices, or Procedures and provides:
 - Status of current Property Management System
 - Voluntary Consensus Standards –OR– Industry Leading Practices in place or proposed for use
- Other performance indicators
 - Metrics/audit results

CO's responsibility to evaluate plan

- Evaluate for *adequacy* to manage GP while in Contractor's possession
 - Past Performance Indicator
- Resource: **ASTM E2452 - 05e1 Standard Practice for Equipment Management Process Maturity (EMPM) Model**
- Use services of *Government Property Administrator* having cognizance over contractor/offeror

Evaluating Proposals with GP

- Fixed Price Contracts
 - Use a *Rental Equivalent Evaluation Factor* (REEF)
 - Computed through Use and Charges Clause
 - FAR 52.245-9
 - Reduce Offer by REEF when comparing offers *with* GP versus offers where no GP was proposed
- Cost Reimbursement type
 - Not really an issue, except for performance risk

Whoops—Who pays?



CO Post-Award Responsibilities

- Contract Modifications Issued for:
 - Authorizing use
 - Changing GP (decrease *OR* increase)
 - Maintenance Actions for GP
 - Property Management Actions
 - Liability Actions
 - Collection of Rent
 - Storage and disposition

Post-Award Property Issues (cont.)

- Contractor entitled to Equitable Adjustment when GFP is
 - Not suitable for use
 - Not delivered in timely manner
 - Decreased
 - Increased (new requirement)
- When GFP requires repair beyond normal maintenance

CO Post-Award Responsibilities

- Responsibility often delegated from PCO to ACO (FAR 42.302(a)(26))
- When contractors request Government property, ACO (FAR 42.302(a)(30)—
 - Evaluates contractor's requests for GP
 - Provides recommendations to CO
 - Ensures required screening before acquisition
 - Approves use on noninterference basis IAW [52.245-9](#), Use and Charges
 - Ensures contractor pays any rental due; and
 - Ensures reporting of items no longer needed for Government production

ACO Responsibilities

- Property Management System (FAR 45.105)
 - If Contractor's PMS needs correction:
 - PA requests correction of deficiencies and
 - Corrective Action Plan/schedule
 - If *not* corrected:
 - Government's Assumption of Risk may be revoked
 - Exercise other remedies
 - » E.g. withdraw use of GP
 - » Reduce award fee
 - » Use as past performance factor for future business

ACO Responsibilities

- Transferring Accountability of GP (FAR 45.106)
 - Contract modifications needed for *both* Losing *and* Gaining Contracts
 - Once completed, deemed GFP to gaining contract
 - Mod. also needed if Govt. needs to *modify* GP already in contractor's possession
- *Caution:* If CAP subsequently transferred to another contract with *same* contractor:
 - Govt. warranty of suitability and timely delivery no longer applies

ACO Responsibilities

- Responsibility and Liability (FAR 45.104)
 - General Rule: Contractors *not* liable for loss, theft, damage or destruction if:
 - Cost-type, T&M, L/H or FP awarded on basis of submission of cost or pricing data
 - If lost, stolen, damaged or destroyed, Govt. needs to fund repair/replacement
 - *Exception*: PA determines PMS system inadequate or presents “undue risk”
 - If so, Government’s Assumption of Risk can be revoked
 - Contractor now becomes liable for loss, theft, etc.
 - If contractor provides GP to a subcontractor, contractor still responsible

ACO Responsibilities

- *Who Pays* for GFP that is not suitable?
 - Generally, the Government
 - Equitable Adjustment under 52.245-1(d) (GFP) and 52.245-1(i) (Equitable Adjustment)
 - When GFP
 - Not Suitable for Use,
 - Delivered late
 - Govt. may authorize at Govt. expense
 - Repair (beyond normal Maintenance), replacement, modifying, returning or disposing

ACO Responsibilities FAR 42.302(a)(26)thru(30)

- Perform property administration (see Part 45)
- (27) [Reserved]
- (28) Perform necessary screening, redistribution, and disposal of contractor inventory.
- (29) Issue contract modifications requiring the contractor to provide packing, crating, and handling services on excess Government property.

ACO Responsibilities (FAR 45.105)

- Property Management System Compliance
 - Cognizant agency analyzes Property Management System
 - Reviews Policies, procedures, practices and systems
 - Requests correction of deficiencies
 - Failure of contractor to correct may result in
 - Revocation of Government's Assumption of Risk
 - Other Remedies

ACO Responsibilities (FAR 45.106)

- Transferring Accountability of GP
 - Must have firm requirement under gaining contract
 - Both Losing and Gaining Contracts require mods.
 - Mod. also required if existing GP in contractor's possession needs to be Modified

ACO Responsibilities

- Inventory Disposal (52.245-1(j))
 - Can't dispose of inventory until Plant Clearance Officer authorizes
 - Lots of rules regarding submission of Inventory Disposal Schedules
 - E.g. contractor only has 30 days once GP no longer required for performance
 - Govt. also on hook for equitable adjustment if Govt. does not furnish disposal instructions within 120 days
- Note other rules on scrap, abandonment, etc.

Impact of Changes

- Role of Contracting Officers and Buyers
 - *Critical* in properly managing Government property in possession of Contractors
- If not done correctly at contract inception:
 - Major repercussions throughout contract performance
- Get PA involved during *planning* stages
- Join your respective professional organizations to learn more, and become an active member



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THANK YOU

On behalf of NPMA & NCMA
we thank you for attending today's event!

Acknowledgement

- We wish to thank Dr. Douglas N. Goetz, CPPM, CF, Professor at Defense Acquisition University for his seminal work in making these major changes in FAR Part 45 relating to government property more understandable to the government contracting community.
- See his article in Contract Management magazine, July 2006 for more details and analysis of the changes.